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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
BIENVENIDO FRANCO, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiffs,

-against-

IDEAL MORTGAGE BANKERS, LTD, D/B/A  
LEND AMERICA, INC., MICHAEL ASHLEY,  
TIMOTHY MAYETTE, HELENE DECILLIS,  
and MICHAEL PRIMEAU,

Defendants.

-----x  
WILLIAM FRASER and BRIAN McCABE,  
Individually, and on Behalf of All Others  
Similarly Situated,

Plaintiffs,

-against-

IDEAL MORTGAGE BANKERS, LTD D/B/A  
LEND AMERICA, INC., MICHAEL ASHLEY,  
TIMOTHY MAYETTE, HELENE DECILLIS,  
and MICHAEL PRIMEAU,

Defendants.

-----x

ECF CASE

Civil Case No.:

07 CV 3956 (JS)(AKT)

**DEFENDANT HELENE DECILLIS'  
MEMORANDUM IN RESPONSE  
TO PLAINTIFFS' RE-FILED  
MOTION TO PROCEED  
AS A COLLECTIVE ACTION  
AND FACILITATE NOTICE  
UNDER 29 U.S.C. § 216(b)**

**Preliminary Statement**

Defendant Helene DeCillis ("DeCillis"), by her attorneys Kravet & Vogel, LLP,  
hereby respectfully responds to the motion to certify as a collective action that Plaintiffs filed on  
February 12, 2010 under the *Fraser* caption styled Plaintiffs' Motion To Proceed As A

Collective Action And Facilitate Notice Under 29 U.S.C. § 216(b) [filed as Docket No. 89 in the *Fraser* action, and as Docket No. 184 in the *Franco* action].<sup>1</sup>

**The Present Motion is a Re-Filing of Plaintiffs' Prior Motion to Certify *Fraser***

In effect, Plaintiffs' present motion is an exact duplicate re-filing of the motion to certify as a collective action that Plaintiffs filed in the *Fraser* case on June 26, 2009 [Docket No. 45 *Fraser* action]. Defendant Lend America by its counsel responded to Plaintiffs' prior motion to certify as a collective action by filing a motion to stay all proceedings pending a ruling on Plaintiffs' previously filed consolidation motion and for an extension of time to respond to Plaintiffs' motion to certify as a collective action [Docket No. 47 *Fraser* action]. Defendant DeCillis joined in the request for a stay [Docket No. 49 *Fraser* action], as did individual defendants Primeau [Docket No. 50, *Fraser* action] and Ashley [Docket Nos. 51, *Fraser* action]. Plaintiffs filed a response to Lend America's motion on July 10, 2009 [Docket No. 48, *Fraser* action] and defendant Lend America filed its reply on July 17, 2009 [Docket No. 54, *Fraser* action]. To date, neither Plaintiffs' June 26, 2009 motion to certify as a collective action [Docket No. 45 *Fraser* action] nor Lend America's motion for an extension of time to respond to the certification motion [Docket No. 47 *Fraser* action] appears to have been decided, despite the grant of the consolidation motion on September 28, 2009 [Docket No. 59 *Fraser* action; Docket No. 128 *Franco* action].

Plaintiffs' appear to have re-filed the exact motion [Docket No. 184 in the *Franco* action; and Docket No. 89 in the *Fraser* action], that Plaintiffs previously filed [Docket No. 45

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<sup>1</sup> Pursuant to Memorandum and Order, dated September 28, 2009 [Docket No. 59 *Fraser* action; Docket No. 128 *Franco* action], Magistrate Judge A Kathleen Tomlinson granted Plaintiff's motion to consolidate the *Franco* and *Fraser* actions, directed that the *Fraser* action be closed and that going forward all filings be filed under the *Franco* action case number. Pursuant to Memorandum & Order, dated November 3, 2009, District Judge Joanna Seybert denied defendant Lend America's appeal of that order [Docket No. 149 *Franco* action].

*Fraser* action], as the present motion is dated June 29, 2009 and seeks identical relief as that requested in the prior motion.

**The Prior Motion to Certify *Franco* as a Collective Action**

Plaintiffs filed a similar motion to certify as a collective action in the *Franco* case on May 14, 2008 [Docket Nos. 38 & 39, *Franco* action]. Although defendant Lend America initially opposed that motion [Docket Nos. 47 & 48, *Franco* action], the parties entered into a stipulation resolving the motion and the proposed notice for the *Franco* action that was filed on July 10, 2008 [Docket No. 53, *Franco* action]. That stipulation was so-ordered by District Judge Seybert on August 13, 2008 [Docket No. 56, *Franco* action], and the *Franco* action was conditionally certified as a collective action, with the Court specifically ordering:

Application Granted. The Court conditionally certifies this action [Franco action] as a collective action pursuant to 29 U.S.C. 216(b) and authorizes Plaintiff to issue the proposed Notice. The Clerk of the Court is directed to terminate the pending motion to certify class (38) and the motion to amend the complaint (23). Additionally, the Court revokes its order referring Plaintiffs' motion to amend (52).

[Docket No. 56, *Franco* action] [emphasis added]. As a result, it appears that an agreed upon form of Notice of Pendency of Collective Action Lawsuit [Docket No. 53-1, *Franco* action] was subsequently mailed by Plaintiffs to all Lend America employees employed as loan officers after September 21, 2004.

**Response to the Present Motion**

Defendant DeCillis does not object to a similar conditional certification of the *Fraser* claims on terms identical to those previously set forth in the *Franco* certification order [Docket No. 56, *Franco* action], except that Ms. DeCillis has no ability to provide the name, address and telephone number information sought by Plaintiffs' in paragraph 2 of the current

motion, which requests an order:

\* \* \*

2. requiring Defendants to produce a computer-readable data file containing the names, addresses and telephone numbers of such potential opt-in members so that notice may be issued; and

\* \* \*

[Docket No. 89 *Fraser*; No 184 *Franco*].<sup>2</sup>

Defendant DeCillis is no longer employed by Lend America and Lend America is now defunct and no longer in business having closed its doors in December 2009 [*see* Docket No. 179, *Franco* action]. Ms. DeCillis was never a shareholder or owner of Lend America and her employment status terminated when Lend America ceased operations. Nor does Ms. DeCillis have any present ability to access any Lend America records or files, and she kept no personal files concerning the type of contact information that Plaintiffs seek by their motion. Indeed, Ms. DeCillis has been informed and so believes that all Lend America records, documents and computer files have been delivered to and are presently in the possession of the Office of the United States Attorney for the Eastern District of New York, pursuant to subpoenas relating to an investigation currently being conducted by that office.

Accordingly, defendant DeCillis does not appose a conditional certification order with respect to the *Fraser* claims of the type previously issued in the *Franco* case, but has no personal ability to deliver the loan officer contact information that Plaintiffs' current motion seeks, and thus would oppose that prong of the motion to the extent that it applies to her.

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<sup>2</sup> The prior conditional certification order issued in *Franco* required defendant Lend America to provide contact information for loan officers employed after September 21, 2004 [Docket No. 56, *Franco* action]. The present motion under the *Fraser* caption seeks contact information for loan officers employed by Lend America after February 13, 2006 [Docket No. 89, *Fraser* action; Docket No. 184 *Franco* action]. It would seem on its face that Plaintiffs already have much, if not all, of the contact information they are now seeking.

**Conclusion**

Defendant DeCillis does not appose a conditional certification order with respect to the *Fraser* claims of the type previously issued in the *Franco* case, but has no personal ability to deliver the loan officer contact information that Plaintiffs' current motion seeks, and thus would oppose that prong of the motion to the extent that it applies to her.

Dated: New York, York, New York  
February 18, 2010

**KRAVET & VOGEL, LLP**

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CERTIFICATION OF SERVICE

I, Joseph A. Vogel, certify that I am over eighteen (18) years of age, am not a party to this action, am an attorney in good standing licensed by the State Bar of New York and admitted to practice in this Court, and that on February 18, 2010, I caused a true and correct copy of the annexed Defendant Helene De Cillis' Memorandum in Response to Plaintiffs' Re-Filed Motion to Proceed as a Collective Action and Facilitate Notice Under 29 U.S.C. § 216 (b), to be served by email via the ECF filing system and by first class mail addressed to counsel for the parties herein, as follows:

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I certify under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Dated: New York, New York  
February 18, 2010

/s/ Joseph A. Vogel  
Joseph A. Vogel (JV-5533)